

# The State of South Carolina



## Office of the Attorney General

T. TRAVIS MEDLOCK  
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING  
POST OFFICE BOX 11549  
COLUMBIA, S.C. 29211  
TELEPHONE 803-734-3970

January 19, 1987

Paul E. Gault, Jr., Esquire  
Gross & Gault  
Post Office Box 507  
Fountain Inn, South Carolina 29644

Dear Mr. Gault:

By your letters and memorandum dated December 4 and December 15, 1986, you have asked that this Office examine the zoning ordinance of the Town of Fountain Inn and opine on the following:

1. Does Town Council have the right under Article 2 of the zoning ordinance to bring in property through annexation as R-M Multiple Family, or must customary procedures for zoning amendments in Article 12 be followed?
2. May Town Council annex property by ordinance, bringing it in as R-16 Residential District without following customary zoning amendment procedures?

Your questions will be addressed with reference to the Town's zoning ordinance and applicable state law.

At the outset, we note that the Town's zoning ordinance was adopted under authority granted by Act No. 487, 1967 Acts and Joint Resolutions. See Section 1:2 of the ordinance. This act is currently codified as Section 6-7-10 et seq., Code of Laws of South Carolina (1976). A comparison of Article 12 of the ordinance to Section 6-7-730 of the Code, relative to enacting or amending zoning regulations or maps, shows a close correlation as to steps to be taken and the timetable to be followed. Most probably, then, the procedures outlined in

Mr. Gault  
Page 2  
January 19, 1987

Section 6-7-730 should be referred to for guidance when procedural questions arise. The procedure to be followed in classifying newly-annexed property is not prescribed, however.

One assumption must be made. Since the ordinance was adopted pursuant to Act No. 487 of 1967, we must assume that the ordinance was adopted following the required public hearing after the specified notice was given. Thus, some kind of due process has presumably been accorded with regard to all property encompassed by the zoning map or ordinance and to all provisions within the ordinance, as well.

You have advised that two property owners holding property adjacent to the current Town boundaries have petitioned the Town for annexation pursuant to Section 5-3-150(3) of the Code. Annexation would be conditioned upon the property being zoned as R-M Multiple Family. As to classifying property brought in by annexation, the zoning ordinance provides in Article 2:

The regulations set forth in this Ordinance shall be applicable within the corporate limits of the city of Fountain Inn, now or hereafter, as designated on the Official Zoning Map. All territory which may hereafter be annexed to the City of Fountain Inn shall be considered to be in the R-16 Residential District unless otherwise determined by City Council.

As noted above, any annexed property being classified as R-16 would be classified under the ordinance which has presumably undergone a public hearing following the required notice. To answer your second question first, it is possible that Town Council could bring in annexed property under the R-16 classification without notice and a public hearing.

However, annexing property does cause a map of the Town, and consequently a zoning map, to change. Arguably, then, the requirements of Section 6-7-730 of the Code and Section 12 of the ordinance must be followed. If annexed property is not to be classified as R-16, then council must make some alternate determination; otherwise, the last phrase of Article 2 of the ordinance is meaningless. The logical procedure for making such a determination would be that of Article 12 of the ordinance (tracking closely the procedure in Section 6-7-730 of the Code).

Mr. Gault  
Page 3  
January 19, 1987

As you note in your memorandum, the heart of the question is whether the statute upon which the zoning ordinance was based is applicable to property being annexed to the municipality. Because annexation would appear to necessarily involve an enactment of or amendment to zoning maps or regulations, it could be so argued. Unfortunately, our courts have not yet given us any guidance in the interpretation of Section 6-7-730 and so we may only speculate as to its applicability in this instance.

The best case which we were able to find discussing a similar circumstance is Calhoun v. Uhls, 533 P.2d 1014 (Okla. Ct. App. 1973), a copy of which is enclosed. In that case, an ordinance provided that all lands annexed into the municipality were automatically classified as single-family dwelling unless otherwise classified in the annexation ordinance. The court stated:

If an automatic classification ordinance be construed to impose a permanent "A" single-family dwelling classification upon annexed land it is vulnerable to the charge of being unconstitutionally arbitrary by contravening the due process and equal protection clauses of the Fourteenth Amendment. If, on the other hand, the ordinance is considered as serving the temporary role of preventing post-annexation establishment of undesirable nonconforming uses, it may escape such constitutional impairment. As an interim device it may be a reasonable exercise of reserved state police powers by giving municipal authorities a reasonable time to enact a comprehensive zoning ordinance classifying newly annexed land after giving proper notice and affording property owners a chance to be heard.

Id., 533 P.2d at 1015-16. Considering this court's decision, two possible courses of action are suggested to accord due process to all involved: to bring the property in as R-16 and amend the classification later following Article 12, or to bring the property in as R-M, having followed the due process provisions of public hearing and notice as outlined in Article 12 of the ordinance.

Mr. Gault  
Page 4  
January 19, 1987

Any conclusions stated herein cannot be free from doubt since the courts of this State have not yet given sufficient guidance on these issues; indeed, very little authority was found elsewhere which shed any light on the issues. The Town may wish to modify its zoning ordinance to clarify its intention as to how newly-annexed property is to be zoned, or the Town may consider having its ordinance judicially interpreted under the Uniform Declaratory Judgment Act to settle the issue.

With kindest regards, I am

Sincerely,

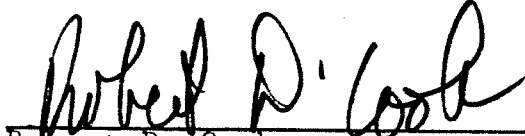
*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General

PDP/an

Enclosure

REVIEWED AND APPROVED BY:



Robert D. Cook  
Executive Assistant for Opinions